

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NICK O WILLIAMS
Claimant

APPEAL NO. 10A-UI-05676-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

**Original Claim: 03/07/10
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 30, 2010, reference 01, that held the claimant was not discharged for misconduct on March 5, 2010, and that allowed benefits. A telephone hearing was held on June 1, 2010. The claimant participated. Brenda Thornton, HR Manager, participated for the employer. Claimant Exhibit A and Employer Exhibits 1 through 5 were received as evidence.

ISSUES:

Whether the claimant was discharged for misconduct.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began work on September 9, 2009 as a full-time extra crew employee in the refinery department, and last worked on March 3, 2010. The claimant last worked a schedule from 7:00 a.m. to 3:00 p.m., Monday through Friday.

On February 1, 2010, the employer placed the claimant on a performance improvement plan due to attendance issues. The claimant absences included a no-call, no-show to work on September 23, 2009; late on November 27; personal business on December 18, 2009, and January 8, 2010; and a no-call, no-show on January 29. The claimant was warned that a further attendance issue could cause a termination from employment.

The claimant missed work due to properly reported illness from February 8 – 11, and it was excused by the employer. The claimant was a no-call, no-show to work on March 4, and March 5, 2010. The claimant called his employer at 12:52 p.m. on March 5. The claimant acknowledged he had missed work for no excusable reason. The claimant admitted he had a drug problem, but he failed to disclose it was due to alcoholism. The claimant has suffered from

this condition for an extensive period of time and he has received treatment, though not recently.

The claimant has received benefits on his current unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer has established the claimant was discharged for misconduct on March 5, 2010, for excessive "unexcused" absenteeism.

The employer warned the claimant on February 1 that a further absence could mean termination from employment. The claimant had a history of unexcused absences. The claimant admitted in this hearing he had no good excuse for failing to call in and report for work on March 4 or 5. Since the claimant knew he had an alcohol problem, and he chose to stop treatment, his recent absences are not for any excusable reason.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on his current unemployment claim, this issue is remanded to claims for an overpayment determination.

DECISION:

The decision of the representative dated March 30, 2010, reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on March 5, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw